IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2279 OF 2006

Gulabchand Chaganlal Shah ....Petitioner
V/s
Pen Nagar Palika & Anr..... ....Respondents.

Mr.P.S.Dani, Adv. For the petitioner.
Mr.M.G.Patil h/f Mr.N.N.Bhadrashete, Adv. For respondent No.1.

CORAM: A.P.DESHPANDE, J.
10/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

Despite service none appears for respondent No.2 although by an order dated 9.2.07 he was put on notice that the writ petition will be heard and finally decided at admission stage.

2. Respondent No.2 moved an application under Order 1 Rule 10 of the Code of Civil Procedure for being impleaded as party in a suit filed by the present petitioner against respondent No.1. The trial Court by an order dated 8.9.05 rejected the application. Aggrieved by rejection of the application seeking impleadment respondent No.2 carried an appeal before the District Judge bearing Misc. Civil Appeal No.88/05. The petitioner resisted the appeal by contending that no appeal lies against an order rejecting an application under Order 1 rule 10 of Code of Civil

Procedure. It was pointed out to the Appellate Court that neither section 104 nor order 43 provides for an appeal against the order rejecting the application under order 1 rule 10 of Code of Civil Procedure. Despite such objection and despite recording a finding that an order passed under Order 1 Rule 10 is not appealable under Order 43 still appeal is entertained and the application is allowed. It is this order passed by the District Judge which is challenged by filing present writ petition. The learned counsel for the petitioner submits that the impugned order passed by the District Judge is wholly without jurisdiction when no appeal lies to the District Judge. The appeal has been entertained by the District Judge by placing reliance on a judgment reported in the case of ***Gurmauj Saran Baluja*** v/s ***Mrs.Joyce C. Salim & Ors.*** AIR 1990 Delhi 13. Perusal of the said judgment reveals that the appeal in the said case was entertained under the provisions of Letters Patent and the ratio of the said judgment is that party can be added at any stage of the proceedings. That does not mean that an order rejecting an application is appealable before the District Judge. The impugned order thus is wholly illegal and the reliance placed by the learned District Judge on the Judgment of Delhi High Court is wholly misplaced. As the impugned order suffers from patent illegality the same is quashed and set aside. Rule made absolute in above terms.